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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 SIOBHAN CARROLL, *individually*  
12 *and on behalf of all others similarly*  
13 *situated,*

14 Plaintiff,

15 v.

16 PHILLIPS & COHEN  
ASSOCIATES, LTD.,

17 Defendant.

Case No. 2:18-cv-08867-CBM-GJS

PROTECTIVE ORDER BASED ON  
THE STIPULATION OF THE  
PARTIES

**NOTE CHANGES MADE BY  
THE COURT IN BOLD**

18 1. A. PURPOSES AND LIMITATIONS  
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20 Discovery in this action is likely to involve production of confidential,  
21 proprietary or private information for which special protection from public disclosure  
22 and from use for any purpose other than prosecuting this litigation may be warranted.  
23 Accordingly, the parties hereby stipulate to and petition the Court to enter the  
24 following Stipulated Protective Order. The parties acknowledge that this Order does  
25 not confer blanket protections on all disclosures or responses to discovery and that  
26 the protection it affords from public disclosure and use extends only to the limited  
27 information or items that are entitled to confidential treatment under the applicable  
28 legal principles.

1           B. GOOD CAUSE STATEMENT

2           This action is likely to involve trade secrets, and other valuable research,  
3 development, commercial, financial, technical and/or proprietary information  
4 belonging to Defendant (including, but not limited to, its computer systems, software  
5 and processes, and information derived therefrom), for which special protection from  
6 public disclosure and from use for any purpose other than prosecution of this action  
7 is warranted. Such confidential and proprietary materials and information consist of,  
8 among other things, confidential business or financial information, information  
9 regarding confidential business practices, or other confidential research,  
10 development, or commercial information (including information implicating privacy  
11 rights of third parties), information otherwise generally unavailable to the public, or  
12 which may be privileged or otherwise protected from disclosure under state or federal  
13 statutes, court rules, case decisions, or common law. Accordingly, to expedite the  
14 flow of information, to facilitate the prompt resolution of disputes over confidentiality  
15 of discovery materials, to adequately protect information the parties are entitled to  
16 keep confidential, to ensure that the parties are permitted reasonable necessary uses  
17 of such material in preparation for and in the conduct of trial, to address their handling  
18 at the end of the litigation, and serve the ends of justice, a protective order for such  
19 information is justified in this matter. It is the intent of the parties that information  
20 will not be designated as confidential for tactical reasons and that nothing be so  
21 designated without a good faith belief that it has been maintained in a confidential,  
22 non-public manner, and there is good cause why it should not be part of the public  
23 record of this case.

24           C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

25           The parties further acknowledge, as set forth in Section 12.3, below, that this  
26 Stipulated Protective Order does not entitle them to file confidential information  
27 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and  
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1 the standards that will be applied when a party seeks permission from the court to file  
2 material under seal.

3 There is a strong presumption that the public has a right of access to judicial  
4 proceedings and records in civil cases. In connection with non-dispositive motions,  
5 good cause must be shown to support a filing under seal. *See Kamakana v. City and*  
6 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors*  
7 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electronics, Inc.*,  
8 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require good  
9 cause showing), and a specific showing of good cause or compelling reasons with  
10 proper evidentiary support and legal justification, must be made with respect to  
11 Protected Material that a party seeks to file under seal. The parties' mere designation  
12 of Disclosure or Discovery Material as CONFIDENTIAL does not—without the  
13 submission of competent evidence by declaration, establishing that the material  
14 sought to be filed under seal qualifies as confidential, privileged, or otherwise  
15 protectable—constitute good cause.

16 Further, if a party requests sealing related to a dispositive motion or trial, then  
17 compelling reasons, not only good cause, for the sealing must be shown, and the relief  
18 sought shall be narrowly tailored to serve the specific interest to be protected. *See*  
19 *Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each  
20 item or type of information, document, or thing sought to be filed or introduced under  
21 seal in connection with a dispositive motion or trial, the party seeking protection must  
22 articulate compelling reasons, supported by specific facts and legal justification, for  
23 the requested sealing order. Again, competent evidence supporting the application to  
24 file documents under seal must be provided by declaration.

25 Any document that is not confidential, privileged, or otherwise protectable in  
26 its entirety will not be filed under seal if the confidential portions can be redacted. If  
27 documents can be redacted, then a redacted version for public viewing, omitting only  
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1 the confidential, privileged, or otherwise protectable portions of the document, shall  
2 be filed. Any application that seeks to file documents under seal in their entirety  
3 should include an explanation of why redaction is not feasible.

## 4 2. DEFINITIONS

5 2.1 Action: this pending federal lawsuit, *Siobhan Carroll, individually and*  
6 *on behalf of all others similarly situated v. Phillips & Cohen Associates, Ltd.*, Case  
7 No. 2:18-cv-08867-CBM-GJS (C.D. Cal.).

8 2.2 Challenging Party: a Party or Non-Party that challenges the designation  
9 of information or items under this Order.

10 2.3 “CONFIDENTIAL” Information or Items: information (regardless of  
11 how it is generated, stored or maintained) or tangible things that qualify for protection  
12 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good  
13 Cause Statement.

14 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their  
15 support staff).

16 2.5 Designating Party: a Party or Non-Party that designates information or  
17 items that it produces in disclosures or in responses to discovery as  
18 “CONFIDENTIAL.”

19 2.6 Disclosure or Discovery Material: all items or information, regardless  
20 of the medium or manner in which it is generated, stored, or maintained (including,  
21 among other things, testimony, transcripts, and tangible things), that are produced or  
22 generated in disclosures or responses to discovery in this matter.

23 2.7 Expert: a person with specialized knowledge or experience in a matter  
24 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
25 an expert witness or as a consultant in this Action.

26 2.8 House Counsel: attorneys who are employees of a party to this Action.  
27 House Counsel does not include Outside Counsel of Record or any other outside  
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1 counsel.

2 2.9 Non-Party: any natural person, partnership, corporation, association or  
3 other legal entity not named as a Party to this action.

4 2.10 Outside Counsel of Record: attorneys who are not employees of a party  
5 to this Action but are retained to represent or advise a party to this Action and have  
6 appeared in this Action on behalf of that party or are affiliated with a law firm that  
7 has appeared on behalf of that party, and includes support staff.

8 2.11 Party: any party to this Action, including all of its officers, directors,  
9 employees, consultants, retained experts, and Outside Counsel of Record (and their  
10 support staffs).

11 2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
12 Discovery Material in this Action.

13 2.13 Professional Vendors: persons or entities that provide litigation support  
14 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
15 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
16 and their employees and subcontractors.

17 2.14 Protected Material: any Disclosure or Discovery Material that is  
18 designated as "CONFIDENTIAL."

19 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material  
20 from a Producing Party.

### 21 3. SCOPE

22 The protections conferred by this Stipulation and Order cover not only  
23 Protected Material (as defined above), but also (1) any information copied or extracted  
24 from Protected Material; (2) all copies, excerpts, summaries, or compilations of  
25 Protected Material; and (3) any testimony, conversations, or presentations by Parties  
26 or their Counsel that might reveal Protected Material.

Any use of Protected Material at trial shall be governed by the orders of the trial judge. This Order does not govern the use of Protected Material at trial.

#### 4. DURATION

Once a case proceeds to trial, information that was designated as **CONFIDENTIAL** or maintained pursuant to this protective order used or introduced as an exhibit at trial becomes public and will be presumptively available to all members of the public, including the press, unless compelling reasons supported by specific factual findings to proceed otherwise are made to the trial judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause” showing for sealing documents produced in discovery from “compelling reasons” standard when merits-related documents are part of court record). Accordingly, for such information, the terms of this protective order do not extend beyond the commencement of the trial.

#### 5. DESIGNATING PROTECTED MATERIAL

##### 5.1 Exercise of Restraint and Care in Designating Material for Protection.

Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items or oral or written communications that qualify so that other portions of the material, documents, items or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

1 If it comes to a Designating Party's attention that information or items that it  
2 designated for protection do not qualify for protection, that Designating Party must  
3 promptly notify all other Parties that it is withdrawing the inapplicable designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in  
5 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
6 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
7 under this Order must be clearly so designated before the material is disclosed or  
8 produced.

9 Designation in conformity with this Order requires:

10 (a) for information in documentary form (e.g., paper or electronic documents,  
11 but excluding transcripts of depositions or other pretrial or trial proceedings), that the  
12 Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter  
13 "CONFIDENTIAL legend"), to each page that contains protected material. If only a  
14 portion of the material on a page qualifies for protection, the Producing Party also  
15 must clearly identify the protected portion(s) (e.g., by making appropriate markings  
16 in the margins).

17 A Party or Non-Party that makes original documents available for inspection  
18 need not designate them for protection until after the inspecting Party has indicated  
19 which documents it would like copied and produced. During the inspection and  
20 before the designation, all of the material made available for inspection shall be  
21 deemed "CONFIDENTIAL." After the inspecting Party has identified the documents  
22 it wants copied and produced, the Producing Party must determine which documents,  
23 or portions thereof, qualify for protection under this Order. Then, before producing  
24 the specified documents, the Producing Party must affix the "CONFIDENTIAL  
25 legend" to each page that contains Protected Material. If only a portion of the material  
26 on a page qualifies for protection, the Producing Party also must clearly identify the  
27 protected portion(s) (e.g., by making appropriate markings in the margins).

1 (b) for testimony given in depositions that the Designating Party identifies the  
2 Disclosure or Discovery Material on the record, before the close of the deposition all  
3 protected testimony.

4 (c) for information produced in some form other than documentary and for any  
5 other tangible items, that the Producing Party affix in a prominent place on the exterior  
6 of the container or containers in which the information is stored the legend  
7 “CONFIDENTIAL.” If only a portion or portions of the information warrants  
8 protection, the Producing Party, to the extent practicable, shall identify the protected  
9 portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
11 failure to designate qualified information or items does not, standing alone, waive the  
12 Designating Party’s right to secure protection under this Order for such material.  
13 Upon timely correction of a designation, the Receiving Party must make reasonable  
14 efforts to assure that the material is treated in accordance with the provisions of this  
15 Order.

## 16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
18 designation of confidentiality at any time that is consistent with the Court’s  
19 Scheduling Order.

20 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
21 resolution process under Local Rule 37.1 et seq.

22 6.3 The burden of persuasion in any such challenge proceeding shall be on  
23 the Designating Party. Frivolous challenges, and those made for an improper purpose  
24 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may  
25 expose the Challenging Party to sanctions. Unless the Designating Party has waived  
26 or withdrawn the confidentiality designation, all parties shall continue to afford the  
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material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

## 7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors

1 to whom disclosure is reasonably necessary for this Action and who have signed the  
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (g) the author or recipient of a document containing the information or a  
4 custodian or other person who otherwise possessed or knew the information;

5 (h) during their depositions, witnesses, and attorneys for witnesses, in the  
6 Action to whom disclosure is reasonably necessary provided: (1) the deposing party  
7 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will  
8 not be permitted to keep any confidential information unless they sign the  
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise  
10 agreed by the Designating Party or ordered by the court. Pages of transcribed  
11 deposition testimony or exhibits to depositions that reveal Protected Material may be  
12 separately bound by the court reporter and may not be disclosed to anyone except as  
13 permitted under this Stipulated Protective Order; and

14 (i) any mediator or settlement officer, and their supporting personnel, mutually  
15 agreed upon by any of the parties engaged in settlement discussions.

16  
17 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
18 OTHER LITIGATION

19 If a Party is served with a subpoena or a court order issued in other litigation  
20 that compels disclosure of any information or items designated in this Action as  
21 “CONFIDENTIAL,” that Party must:

22 (a) promptly notify in writing the Designating Party. Such notification shall  
23 include a copy of the subpoena or court order;

24 (b) promptly notify in writing the party who caused the subpoena or order to  
25 issue in the other litigation that some or all of the material covered by the subpoena  
26 or order is subject to this Protective Order. Such notification shall include a copy of  
27 this Stipulated Protective Order; and

1 (c) cooperate with respect to all reasonable procedures sought to be pursued  
2 by the Designating Party whose Protected Material may be affected.

3 If the Designating Party timely seeks a protective order, the Party served with  
4 the subpoena or court order shall not produce any information designated in this action  
5 as “CONFIDENTIAL” before a determination by the court from which the subpoena  
6 or order issued, unless the Party has obtained the Designating Party’s permission. The  
7 Designating Party shall bear the burden and expense of seeking protection in that court  
8 of its confidential material and nothing in these provisions should be construed as  
9 authorizing or encouraging a Receiving Party in this Action to disobey a lawful  
10 directive from another court.

11 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
12 PRODUCED IN THIS LITIGATION

13 (a) The terms of this Order are applicable to information produced by a Non-  
14 Party in this Action and designated as “CONFIDENTIAL.” Such information  
15 produced by Non-Parties in connection with this litigation is protected by the  
16 remedies and relief provided by this Order. Nothing in these provisions should be  
17 construed as prohibiting a Non-Party from seeking additional protections.

18 (b) In the event that a Party is required, by a valid discovery request, to produce  
19 a Non-Party’s confidential information in its possession, and the Party is subject to an  
20 agreement with the Non-Party not to produce the Non-Party’s confidential  
21 information, then the Party shall:

22 (1) promptly notify in writing the Requesting Party and the Non-Party that  
23 some or all of the information requested is subject to a confidentiality agreement with  
24 a Non-Party;

25 (2) promptly provide the Non-Party with a copy of the Stipulated Protective  
26 Order in this Action, the relevant discovery request(s), and a reasonably specific  
27 description of the information requested; and

1 (3) make the information requested available for inspection by the Non-Party,  
2 if requested.

3 (c) If the Non-Party fails to seek a protective order from this court within 14  
4 days of receiving the notice and accompanying information, the Receiving Party may  
5 produce the Non-Party's confidential information responsive to the discovery request.  
6 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce  
7 any information in its possession or control that is subject to the confidentiality  
8 agreement with the Non-Party before a determination by the court. Absent a court  
9 order to the contrary, the Non-Party shall bear the burden and expense of seeking  
10 protection in this court of its Protected Material.

#### 11 12 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

13 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
14 Protected Material to any person or in any circumstance not authorized under this  
15 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
16 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts  
17 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or  
18 persons to whom unauthorized disclosures were made of all the terms of this Order,  
19 and (d) request such person or persons to execute the "Acknowledgment and  
20 Agreement to Be Bound" that is attached hereto as Exhibit A.

#### 21 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE 22 PROTECTED MATERIAL

23 When a Producing Party gives notice to Receiving Parties that certain  
24 inadvertently produced material is subject to a claim of privilege or other protection,  
25 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
26 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure  
27 may be established in an e-discovery order that provides for production without prior  
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1 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
2 parties reach an agreement on the effect of disclosure of a communication or  
3 information covered by the attorney-client privilege or work product protection, the  
4 parties may incorporate their agreement in the stipulated protective order submitted  
5 to the court.

## 6 12. MISCELLANEOUS

7 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
8 person to seek its modification by the Court in the future.

9 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
10 Protective Order, no Party waives any right it otherwise would have to object to  
11 disclosing or producing any information or item on any ground not addressed in this  
12 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
13 ground to use in evidence of any of the material covered by this Protective Order.

14 12.3 Filing Protected Material. A Party that seeks to file under seal any  
15 Protected Material must comply with Local Civil Rule 79-5. Protected Material may  
16 only be filed under seal pursuant to a court order authorizing the sealing of the specific  
17 Protected Material at issue. If a Party's request to file Protected Material under seal  
18 is denied by the court, then the Receiving Party may file the information in the public  
19 record unless otherwise instructed by the court.

## 20 13. FINAL DISPOSITION

21 After the final disposition of this Action, within 60 days of a written request by  
22 the Designating Party, each Receiving Party must return all Protected Material to the  
23 Producing Party or destroy such material. As used in this subdivision, "all Protected  
24 Material" includes all copies, abstracts, compilations, summaries, and any other  
25 format reproducing or capturing any of the Protected Material. Whether the Protected  
26 Material is returned or destroyed, the Receiving Party must submit a written  
27 certification to the Producing Party (and, if not the same person or entity, to the  
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1 Designating Party) by the 60 day deadline that (1) identifies (by category, where  
2 appropriate) all the Protected Material that was returned or destroyed and (2) affirms  
3 that the Receiving Party has not retained any copies, abstracts, compilations,  
4 summaries or any other format reproducing or capturing any of the Protected Material.  
5 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
6 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
7 correspondence, deposition and trial exhibits, expert reports, attorney work product,  
8 and consultant and expert work product, even if such materials contain Protected  
9 Material.

10 **Final disposition shall be deemed to be the later of (1) dismissal of all**  
11 **claims and defenses in this Action, with or without prejudice; and (2) final**  
12 **judgment herein after the completion and exhaustion of all appeals, re-hearings,**  
13 **remands, trials, or reviews of this Action, including the time limits for filing any**  
14 **motions or applications for extension of time pursuant to applicable law.**

15 14. VIOLATION

16 Any violation of this Order may be punished by appropriate measures  
17 including, without limitation, contempt proceedings and/or monetary sanctions.

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19 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

20  
21 DATED: February 25, 2019

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GAIL J. STANDISH  
UNITED STATES MAGISTRATE JUDGE

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under penalty of perjury  
5 that I have read in its entirety and understand the Stipulated Protective Order that  
6 was issued by the United States District Court for the Central District of California  
7 on [date] in the case of *Siobhan Carroll, individually and on behalf of all others*  
8 *similarly situated v. Phillips & Cohen Associates, Ltd.*, Case No. 2:18-cv-08867-  
9 CBM-GJS (C.D. Cal.). I agree to comply with and to be bound by all the terms of  
10 this Stipulated Protective Order and I understand and acknowledge that failure to so  
11 comply could expose me to sanctions and punishment in the nature of contempt. I  
12 solemnly promise that I will not disclose in any manner any information or item that  
13 is subject to this Stipulated Protective Order to any person or entity except in strict  
14 compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court for the  
16 Central District of California for enforcing the terms of this Stipulated Protective  
17 Order, even if such enforcement proceedings occur after termination of this action.

18 I hereby appoint \_\_\_\_\_ [print or type full name] of  
19 \_\_\_\_\_ [print or type full address and  
20 telephone number] as my California agent for service of process in connection with  
21 this action or any proceedings related to enforcement of this Stipulated Protective  
22 Order.

23 Date: \_\_\_\_\_

24 City and State where sworn and signed: \_\_\_\_\_

25 Printed name: \_\_\_\_\_

26  
27 Signature: \_\_\_\_\_